



**Austin City Code Amendment
CITY OF AUSTIN
RECOMMENDATION FOR COUNCIL ACTION**

AGENDA ITEM NO.: 13
AGENDA DATE: Thu 12/01/2005
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SUBJECT: Approve an Ordinance repealing and replacing Chapter 10-3, Food and Food Handlers, of the City Code and creating offenses and providing penalties.

AMOUNT & SOURCE OF FUNDING: \$9,735 in unanticipated revenues for the General Fund.

FISCAL NOTE: N/A

REQUESTING Health and Human
DEPARTMENT: Services

**DIRECTOR'S
AUTHORIZATION:** David Lurie

FOR MORE INFORMATION CONTACT: Shannon Jones, Asst. Director, Public Health and Community Services, 972-5416; David B. Lopez, Manager, HHSD Environmental and Consumer Health Unit, 972-5867; Linda Terry, Agenda Coordinator, 972-5023

PRIOR COUNCIL ACTION: N/A

BOARD AND COMMISSION ACTION: N/A

BACKGROUND

The Austin City Code requirements for Food and Food Handlers, now contained in Chapter 10-3 of the Code were last adopted in 1998. In the spring of 2005, the Texas Department of State Health Services proposed major revisions to the State regulations governing food service and retail food sanitation, the first major State revision since adoption in 1998. The City Code refers to these regulations in setting local permitting and inspection requirements for a variety of food operations. Therefore, the recommended new Chapter 10-3 will adopt anew the State regulations with updated references. In addition, the City is taking advantage of this opportunity to make housekeeping improvements with changes in the Code and the Fee Schedule

The Department shared its recommendations with industry representatives earlier in the year, and held a public hearing on September 6, 2005.

STAFF RECOMMENDATIONS

The Health and Human Services Department is recommending that the Austin City Council amend the provisions of Chapter 10-3 of the City Code due to revision in the Texas Department of State Health Services "Texas Food Establishment Rules" (Chapter 229 of Title 25 of the Texas Administrative Code). The changes in the Code can be categorized as follows:

Changes to Reflect State Rules/Legislation

- Deleting obsolete references to the State Blind Commission Establishments, which are permitted and inspected by the State.
- Deleting references to the Food Manager's Certification Course and clarifying certificate expiration dates. The Department is now a licensed test site with optional courses provided.
- Eliminating terms that are defined in State Statutes or Texas Food Establishment Rules (TFER)

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Operational Impacts for Food Establishments

- Retail food stores will now be allowed to have one restroom for up to 10 employees on duty to match the requirements of Food Service Establishments.
- A Conditional Permit may be issued to an establishment to continue operating during change of ownership.
- A Certified Food Manager will no longer be required at Food Processing Plants that store only packaged, non-potentially hazardous foods to match the requirements for Food Service establishments.
- Clarification of ID requirements for permit applications.

Fee Impacts

- Payment of permit fees will be required unless an establishment is funded as part of a City of Austin social services contract
- One Certified Food Manager for up to four retail stores is changed to one per store.

REQUESTED COUNCIL ACTION

Council is requested to approve an Ordinance repealing Chapter 10-3, Food and Food Handlers, of the City Code and Adopting a New Chapter 10-3, Food and Food Handlers; Creating Offenses and Providing Penalties

ORDINANCE NO.

AN ORDINANCE REPEALING AND REPLACING CHAPTER 10-3 OF THE CITY CODE RELATING TO FOOD AND FOOD HANDLERS; AND CREATING OFFENSES.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. Chapter 10-3 of the City Code is repealed and replaced by a new Chapter 10-3 to read:

CHAPTER 10-3. FOOD AND FOOD HANDLERS.

ARTICLE 1. GENERAL PROVISIONS.

§ 10-3-1 DEFINITIONS.

(A) Except as provided in Subsection (B), a term defined by Texas Administrative Code Title 25, Part 1, Chapter 229, Subchapter K (*Texas Food Establishments*) has the same meaning in this chapter.

(B) In this chapter:

(1) **FOOD ENTERPRISE** includes:

- (a) a food establishment;
- (b) a food processing plant; and
- (c) a vending machine.

(2) **MOBILE FOOD ESTABLISHMENT** includes an establishment that offers only prepackaged foods that are not potentially hazardous.

(3) **PERSON IN CHARGE** means an employee who is present at a food enterprise or bed and breakfast limited. If an employee appears to be a supervisor, that employee is the person in charge.

§ 10-3-2 COMPLIANCE REQUIRED.

(A) A person may not manufacture for supply, possess with intent to supply, display, sell, or supply, with or without charge, any food that is adulterated or

misbranded. All food shall be prepared, packaged, transported and supplied in compliance with Texas Health and Safety Code Title 6, Chapter 431 (*Texas Food, Drug, and Cosmetic Act*).

(B) A person operating a food establishment, vending machine, or bed and breakfast limited shall comply with this chapter and Texas Administrative Code Title 25, Part 1, Chapter 229, Subchapter K (*Texas Food Establishments*).

(C) A person operating a food processing plant shall comply with this chapter and the requirements of Code of Federal Regulations Title 21, Part 110 (*Current Good Manufacturing Practice In Manufacturing, Packing, Or Holding Human Food*).

§ 10-3-3 VARIANCES.

(A) The health authority may grant a variance by modifying or waiving a local requirement of this chapter if the health authority determines that a health hazard will not result from the variance.

(B) A person requesting a variance must provide the following information to the health authority:

- (1) a description of the requested variance from the local requirement;
- (2) a citation to the relevant section of this chapter; and
- (3) a description of how potential health hazards will be prevented if the variance is granted.

(C) If the health authority grants a variance, the health authority shall retain in its records the information required by Subsection (B).

§ 10-3-4 SERVICE OF NOTICE.

(A) The health authority may serve a notice required by this chapter by:

- (1) personal delivery to the permit holder or person in charge; or
- (2) registered or certified mail, return receipt requested, to the last known address of the permit holder.

(B) The health authority shall retain in its records a copy of the notice.

§ 10-3-5 HEARINGS.

(A) The health authority shall conduct a hearing under this chapter at a time and place determined by the health authority.

(B) The health authority shall:

- (1) make and record findings based on the evidence presented at the hearing;
- (2) affirm, modify, or rescind the order considered at the hearing; and
- (3) provide a written decision to the permit holder.

ARTICLE 2. FOOD MANAGER CERTIFICATE.

§ 10-3-31 FOOD MANAGER CERTIFICATE REQUIRED.

(A) Except as provided in Subsections (B) and (C), a person may not operate a food enterprise or bed and breakfast limited unless at least one employee has a food manager certificate issued by the health authority.

(B) A food manager certificate is not required for a person who operates:

- (1) a food service establishment that provides only beverages or prepackaged food that is not a potentially hazardous food;
- (2) a nonprofit organization that serves food only to members of the organization;
- (3) a food processing plant that is inspected at least once each week by a state or federal food sanitation inspector or that only stores prepackaged food that is not potentially hazardous; or
- (4) a vending machine or a mobile food establishment that offers only prepackaged food, if a certified food manager is in charge at the central preparation facility that supplies the products for the vending machine or mobile food establishment.

(C) If a food manager certificate expires or the certificate holder is no longer employed by the food enterprise or bed and breakfast limited, the person in charge shall comply with Subsection (A) not later than the 30th day after the date the certificate expires or the holder's employment with the food enterprise or bed and breakfast limited ends.

(D) The person in charge shall post the food manager certificate in a prominent location in the food enterprise or bed and breakfast limited.

§ 10-3-32 APPLICATION FOR FOOD MANAGER CERTIFICATE.

(A) A person who seeks a food manager certificate must submit an application to the health authority. The application must include:

- (1) the applicant's full name;
- (2) the applicant's mailing address;
- (3) applicant's date of birth;
- (4) a copy of a government-issued identification document that includes a photograph of the applicant;
- (5) the name and address of the applicant's employer;
- (6) the applicant's job title and a description of the applicant's duties; and
- (7) the applicant's signature.

(B) An applicant shall pay the certificate issuance fee established by separate ordinance, except that an employee of a public school located in the City is not required to pay the fee.

(C) A food manager certificate is void if the applicant obtains the certificate by knowingly providing false information on the application.

§ 10-3-33 ISSUANCE OF FOOD MANAGER CERTIFICATE.

(A) The health authority shall issue a food manager certificate to an applicant who pays the required fee and who:

- (1) provides evidence of current certification from a food management program accredited by the Department of State Health Services in accordance with Texas Administrative Code Title 25, Section 229.172 (*Accreditation of Certified Food Management Programs*); or
- (2) passes an examination and obtains certification as provided in Texas Administrative Code Title 25, Section 229.176 (*Certification of Food Managers*).

(B) A food manager certificate expires on the date indicated on the food manager certificate.

(C) A food manager certificate is not transferable.

ARTICLE 3. PERMITS.

§ 10-3-61 PERMIT REQUIRED.

(A) Except as provided in Subsection (B), a person must hold a permit issued by the health authority to operate a food enterprise.

(B) A permit is not required for:

(1) a group residence:

(a) with not more than six residents; or

(b) with not more than 25 residents, if all food is bought and prepared by the residents; or

(2) a vending machine that does not dispense potentially hazardous food.

(C) A person must comply with the requirements of this chapter to receive or retain a permit.

(D) A permit issued under this chapter is not transferable.

§ 10-3-62 PERMIT TO BE POSTED.

A permit holder or person in charge of a food enterprise shall post a permit required by this chapter in a prominent public location.

§ 10-3-63 PERMIT APPLICATION.

(A) A person who seeks to operate a food enterprise must submit to the health authority a written application for a permit on a form provided by the health authority. The application must include:

(1) the name and address of each applicant;

(2) the location and type of the proposed food enterprise;

(3) the name of the person responsible for the proposed food enterprise and the person's identification number as shown on a government-issued identification document;

(4) other information reasonably required by the health authority; and

(5) the signature of each applicant.

(B) An applicant for a temporary food service establishment permit must submit the application to the health authority not later than the 10th day before the date for which the permit is sought.

(C) Before approving or disapproving an application for a permit, the health authority shall inspect the proposed food enterprise to determine whether it complies with this chapter.

(D) If the health authority determines that the proposed food enterprise complies with this chapter, the health authority shall issue a permit to the applicant.

(E) If the health authority determines that the proposed food enterprise does not comply with this chapter, the health authority shall:

- (1) deny a permit to the applicant; or
- (2) issue a permit to the applicant that is subject to appropriate conditions.

(F) The health authority may modify or remove a condition to a permit issued under Subsection (E)(2) after a reinspection.

(G) A permit is void if the applicant obtains the permit by knowingly providing false information on the application.

§ 10-3-64 PERMIT FEES.

(A) An applicant shall pay the permit fee established by separate ordinance, except that a permit fee is not required for a food enterprise that is:

- (1) necessary to provide services under a contract for social services with the City; or
- (2) operated by a public school system.

(B) If a permit application is not approved, the health authority may refund the permit fee to the applicant.

§ 10-3-65 PERMIT EXPIRATION.

A permit issued under this chapter expires one year after the date it is issued, except that a permit for a temporary food establishment or a permit subject to conditions expires on the date indicated on the permit.

§ 10-3-66 PERMIT SUSPENSION.

(A) The health authority may suspend a permit issued under this chapter without prior notice or hearing if:

- (1) the permit holder does not comply with this chapter;
- (2) the food enterprise does not comply with this chapter; or
- (3) the food enterprise constitutes a public health hazard.

(B) If the health authority suspends a permit:

(1) the health authority shall give written notice to the permit holder or person in charge that:

- (a) the permit is immediately suspended on service of the notice; and
- (b) the permit holder may file a written request for a hearing not later than the 10th day after the date of service of notice of suspension; and

(2) the permit holder or person in charge shall immediately stop food operations.

(C) Suspension of a permit is effective on service of notice.

(D) A permit holder may file with the health authority a written request for a hearing on a permit suspension. The request must be filed not later than the 10th day after the date of service of notice of suspension.

(E) If a timely hearing request is filed, the health authority shall hold a hearing on the permit suspension not later than the 10th business day after the date the hearing request is filed.

(F) If a timely hearing request is not filed, the suspension continues in effect.

(G) The health authority may reinstate a permit if the reason for suspension no longer exists.

§ 10-3-67 PERMIT DENIAL OR REVOCATION.

(A) The health authority may deny or revoke a permit issued under this chapter if the permit holder or the permit holder's employee:

- (1) commits critical or repeated violations of applicable law;
- (2) knowingly provides false information on an application; or
- (3) interferes with the health authority in the performance of the health authority's duties.

(B) Before denying or revoking a permit, the health authority shall provide the permit holder or person in charge with written notice of the pending permit revocation or denial. The written notice shall include:

- (1) the reason the permit is subject to denial or revocation; and
- (2) if applicable:
 - (a) the date on which the permit is scheduled to be revoked; and
 - (b) a statement that the permit will be revoked on the scheduled date unless the permit holder files a written request for a hearing with the health authority not later than the 10th day after the date the notice is served.

(C) A permit denial or revocation becomes final on expiration of the time period prescribed by the notice if the permit holder does not file within that time period a request for hearing with the health authority.

ARTICLE 4. MOBILE FOOD ESTABLISHMENTS.

§ 10-3-91 PERMIT REQUIREMENTS.

(A) For a mobile food establishment permit, the health authority shall:

- (1) describe on the permit the food items that may be sold or served; and
- (2) provide to the permit holder a sticker that indicates the permit expiration date and describes the food items that may be sold or served.

(B) A person operating a mobile food establishment shall prominently display the sticker.

§ 10-3-92 ITEMS TO BE SOLD.

(A) A person operating a mobile food establishment may only sell a food item described in the permit.

(B) A person operating a mobile food establishment may not sell a non-food

item.

§ 10-3-93 SANITARY REQUIREMENTS.

(A) A person who operates a mobile food establishment shall maintain food at a hot holding temperature by mechanical means. If the person uses a pressurized fuel system or container, it must comply with fire and explosion safety standards established by the fire marshal.

(B) A mobile food establishment must be equipped with an attached trash receptacle approved by the health authority. The operator must hold, store, and dispose of solid and liquid waste in a receptacle approved by the health authority.

(C) A person may serve only prepackaged food from a mobile food establishment.

(1) This limitation does not apply to the following food:

(a) nuts served with the shells intact;

(b) fresh fruit or vegetables served with the skin intact;

(c) flavored crushed ice or beverages kept in covered containers, and served either in an original container or in a single-service cup; and

(d) fresh, baked pastries kept in containers with close-fitting lids and served on single-service products.

(2) This limitation does not apply to a mobile food establishment if it:

(a) is completely enclosed and equipped with utensil and hand washing facilities; and

(b) operates from a central preparation facility or fixed location approved by the health authority.

(D) A person who operates a mobile food establishment must store ice in a covered container that is continuously drained to a waste holding tank, and may not allow a customer to self-serve ice.

§ 10-3-94 PUSHCARTS.

(A) A person who operates a pushcart as a mobile food establishment may not use a pushcart that is larger than four feet wide, five feet long, or four feet tall, excluding a shade umbrella, if any.

(B) A person may not operate a pushcart as a mobile food establishment if the pushcart has been structurally altered without the approval of the health authority.

§ 10-3-95 USE OF PUBLIC PROPERTY.

(A) If a person operates a mobile food establishment on public property, the person may not place food or supplies on the ground or on tables, chairs, or shelves that are not part of the mobile vending establishment.

(B) A person who operates a mobile food establishment may not go into a City park to sell, offer for sale, or display a food item, unless the person's activity is authorized by:

- (1) a park property rental agreement; or
- (2) written permission of the director of the Parks and Recreation Department.

ARTICLE 5. RESTROOMS AND OTHER REQUIREMENTS.

§ 10-3-121 EMPLOYEE RESTROOM REQUIREMENTS.

(A) The owner or person in charge of a food establishment or food processing plant shall provide:

- (1) if 10 or fewer employees are on duty at one time, not less than one restroom; or
- (2) if more than 10 employees are on duty at one time, not less than two restrooms, one for each sex.

(B) An employee restroom shall be conveniently located and accessible during hours of operation.

§ 10-3-122 FOOD SERVICE ESTABLISHMENT RESTROOM REQUIREMENTS.

(A) The owner or person in charge of a food service establishment that serves alcoholic beverages or seats 20 or more persons shall provide not less than two restrooms for public use in the establishment, one for each sex. The restrooms shall be conveniently accessible from the seating or dining area during hours

of operation.

(B) Public restrooms are not required to be located in an individual food service establishment if:

(1) the food service establishment shares a common seating area, including a food court, with another food establishment; and

(2) at least two restrooms for public use, one for each sex, are provided in a location that is conveniently accessible from the seating or dining area during hours of operation.

(C) Restrooms required under this section may be used as employee restrooms if the restrooms are located:

(1) in the food service establishment;

(2) within 150 feet of the main food preparation area of the food service establishment; or

(3) in a location determined by the health authority to be convenient and accessible to employees.

§ 10-3-123 CHILD CARE FACILITY FOOD ESTABLISHMENTS.

A food establishment located in a child care facility may not serve as a central preparation facility for a catering or mobile food establishment.

ARTICLE 6. INSPECTIONS.

§ 10-3-151 INSPECTION AUTHORITY.

(A) The health authority may inspect a food enterprise or bed and breakfast limited during regular business hours or at another reasonable time to determine compliance with this chapter. The health authority shall display identification upon request.

(B) The health authority may examine or sample food that is stored, prepared, packaged, served, or otherwise provided for human consumption by a food enterprise or bed and breakfast limited.

(C) The health authority may examine the records of a food enterprise or bed and breakfast limited to obtain information relating to:

(1) food and supplies purchased, received, or used; or

- (2) an employee.

§ 10-3-152 INSPECTIONS GENERALLY.

(A) After inspecting a food enterprise or bed and breakfast limited, the health authority shall record the health authority's findings on an appropriate inspection report form.

(B) The health authority shall provide a copy of the inspection report to the person in charge of the food enterprise or bed and breakfast limited.

(C) If a violation is found, the health authority shall:

- (1) prescribe on the inspection report a reasonable time period for correction of the violation; and

- (2) perform re-inspections at reasonable time intervals to determine whether required corrections are made.

§ 10-3-153 FOOD SERVICE ESTABLISHMENT OR RETAIL FOOD STORE INSPECTIONS AND VIOLATIONS.

(A) After inspecting a food service establishment or a retail food store, the health authority shall state on the inspection report:

- (1) a weighted point value for each violation of a critical requirement;

- (2) the rating score of the establishment, determined by subtracting from 100 the total of the weighted point values for all violations; and

- (3) that failure to correct the violations within the prescribed time period may result in the suspension of the permit.

(B) The person in charge of a food service establishment or a retail food store shall correct a violation of a critical requirement:

- (1) as soon as possible; or

- (2) if the health authority approves, not later than the 10th day after date of the inspection.

(C) The person in charge of a food service establishment or a retail food store

shall correct non-critical violations:

- (1) within the time period prescribed by the inspection report; or
- (2) if a time period is not prescribed, as soon as possible before the next routine inspection.

(D) If the rating score of a food service establishment or a retail food establishment is less than 70 points, the person in charge shall begin correcting identified violations not later than 48 hours after the inspection.

§ 10-3-154 TEMPORARY FOOD ESTABLISHMENT VIOLATIONS.

The person in charge of a temporary food service establishment shall immediately correct violations identified in an inspection report. If the violations are not corrected immediately, the person in charge shall stop food service operations at the establishment until authorized to resume by the health authority.

§ 10-3-155 FOOD PROCESSING PLANT, FOOD VENDING MACHINE, OR BED AND BREAKFAST LIMITED VIOLATIONS.

The person in charge of a food processing plant, food vending machine, or bed and breakfast limited shall correct violations identified in an inspection report before the expiration of the time period prescribed by the report.

§ 10-3-156 MOBILE FOOD ESTABLISHMENT VIOLATIONS.

A person who operates a mobile food establishment shall correct violations identified in an inspection report as soon as possible, but not later than the 10th day after the date of the inspection.

§ 10-3-157 HOLD ORDER AND CONDEMNATION OF FOOD.

(A) The health authority may place a hold order on food after:

- (1) determining that the food is stored, prepared, transported, or served in violation of applicable law; and
- (2) giving written notice to the permit holder or the person in charge.

(B) The health authority shall label or otherwise identify food that is subject to a hold order. Unless authorized by the health authority, a person may not use, serve, sell, or move food that is subject to a hold order.

(C) The health authority shall permit storage of food that is subject to a hold order. The hold order may prescribe storage conditions for the food.

(D) The health authority shall state in a hold order:

(1) the reasons for the hold order;

(2) that a person may file a written request for a hearing with the health authority not later than the 10th day after the date the hold order is issued; and

(3) that if a hearing is not requested, the food will be destroyed.

(E) The permit holder or person in charge may file with the health authority a written request for a hearing on a hold order. The request must be filed not later than the 10th day after the date the hold order is issued.

(F) If a timely hearing request is filed, the health authority shall hold a hearing on the hold order.

(G) On the basis of evidence produced at the hearing, the health authority may:

(1) vacate the hold order; or

(2) by written order require the permit holder or person in charge to denature or destroy the food, or to bring the food into compliance with applicable laws.

(H) An order of the health authority to denature or destroy food is stayed if the order is appealed to a court of competent jurisdiction not later than the third day after the date the order is issued.

(I) The health authority shall immediately condemn food or render food unsalable as human food if the health authority determines that the food:

(1) contains a filthy, decomposed, or putrid substance;

(2) may be poisonous or deleterious to health; or

(3) is otherwise unsafe.

ARTICLE 7. BUILDING PLAN APPROVAL.

§ 10-3-181 BUILDING PLAN APPROVAL.

(A) A person may not construct or remodel a food enterprise unless the health authority has approved the building plan.

(B) The health authority shall approve a building plan for a food enterprise if it complies with the requirements of this chapter.

ARTICLE 8. PENALTIES; INJUNCTIONS.

§ 10-3-211 OFFENSES AND PENALTIES.

(A) A person commits an offense if the person knowingly provides false information on an application for a food manager certificate.

(B) A person commits an offense if the person uses a food manager certificate that has not been issued to the person by the health authority.

(C) A person commits an offense if the person knowingly provides false information on an application for a permit required by this chapter.

(D) A person commits an offense if the person uses a permit that has not been issued to the person by the health authority.

(E) A person commits an offense if the person performs an act prohibited by this chapter or fails to perform an act required by this chapter.

(F) A person commits a separate offense each day that the person performs an act prohibited by this chapter or fails to perform an act required by this chapter.

(G) Except as otherwise provided, proof of criminal negligence is required for conviction of an offense under this chapter. Proof of a higher degree of culpability than criminal negligence constitutes proof of criminal negligence.

(H) An offense under this section is a Class C misdemeanor and is punishable by a fine not to exceed \$2,000.

§ 10-3-212 INJUNCTION.

The health authority may seek to enjoin violations of this chapter.

